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ABSTRACT

The preliminary study of the technical and legal aspects of photographic reproduction of copyright works, submitted to the UNESCO General Conference shows that the use of modern methods of reproduction, including photocopying, microform reproduction and analogous procedures, makes it desirable to seek ways of reconciling users' interests with the rights of the authors and publishers of works reproduced in this way. While it is necessary to protect the legitimate rights of copyright holders, their control over the use of copyright works must not become an obstacle to the development and improvement of documentation systems. Account must be taken of the interests of authors and publishers, but also of the advantages that photographic reproduction processes offer to users, libraries, documentation centres, educational establishments, research workers, etc. This report does not repeat the arguments set forth in the preliminary study regarding the desirability and timeliness of adopting an international regulation on this subject, but takes into account new factors that have become operative since that document was prepared. This report also considers the possible scope of the proposed regulation and the method which should be adopted for the purpose. (Author/SJ)

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Seventeenth session, Paris 1972

17 C/23
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Item 25 of the Provisional Agenda

ADVISABILITY OF ADOPTING AN INTERNATIONAL REGULATION CONCERNING THE PHOTOGRAPHIC REPRODUCTION OF COPYRIGHT WORKS

SUMMARY

After considering the study of the technical and legal aspects of the photographic reproduction of copyright works (document 16 C/20), at its sixteenth session, the General Conference decided, in pursuance of Article 7, paragraph 1, of the Rules of Procedure concerning Recommendations to Member States and International Conventions, to defer to its seventeenth session consideration of the desirability of adopting an international regulation on the subject (resolution 16 C/5.132).

As invited by the same resolution, the Director-General submits to the General Conference a report on the desirability of an international regulation concerning the photographic reproduction of copyright works, on the possible scope of such a regulation and on the method which should be adopted for the purpose.

Decision required: paragraph 7.

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1. At its sixteenth session, the General Conference adopted resolution 5.132, reading as follows:

"The General Conference,

Considering the Rules of Procedure concerning Recommendations to Member States and International Conventions covered by the terms of Article IV, paragraph 4, of the Constitution,

Having examined the Director-General's preliminary study of the technical and legal aspects of the photographic reproduction of copyright works (document 16 C/20),

Taking note of resolution 5.4 adopted on this subject by the Executive Board at its 84th session,

1. Decides, in accordance with Article 7, paragraph 1, of the Rules of Procedure concerning Recommendations to Member States and International Conventions, to defer consideration of the desirability of adopting an international regulation concerning the photographic reproduction of copyright works until its seventeenth session;

2. Invites the Director-General, in accordance with Article 7, paragraph 2, of the above-mentioned Rules of Procedure, to submit to it, at its seventeenth session, a report on the desirability of an international regulation on this subject, on the possible scope of such a regulation, and on the method which should be adopted for the purpose."

2. In pursuance of this resolution, the Director-General has prepared the report mentioned in its paragraph 2. This report is submitted to the General Conference as an annex to this document.

3. In accordance with Article 6 of the Rules of Procedure concerning Recommendations to Member States and International Conventions, it shall be for the Conference to decide whether the question of the photographic reproduction of copyright works should be regulated at the international level and, if so, to determine to what extent the question can be regulated and whether the method adopted should be an international convention or, alternatively, a recommendation to Member States.

4. It should be recalled that under Article 9 of the above-mentioned Rules of Procedure, the General Conference shall not vote on the adoption of a draft convention or recommendation before the ordinary session following that at which it has taken the decision mentioned above. Consequently, in this case, it cannot adopt an international regulation on the subject in question before its eighteenth session (1974).

5. If the General Conference decides that the question should be regulated at the international level, the Director-General will prepare a preliminary report on the situation with regard to the problem and the possible scope of such a regulation, together with a preliminary draft of the instrument in question. These documents will be submitted to Member States for comments, and a final report containing revised drafts will be drawn up on the basis of the replies received.

6. In accordance with Article 10, paragraph 4, of the above-mentioned Rules of Procedure, the General Conference shall also decide whether the final report shall be submitted to it direct or whether it shall be submitted to a special committee consisting of technical and legal experts appointed by Member States. In the latter case, the Special Committee shall submit a draft which has its approval to Member States, with a view to its discussion by the General Conference.

7. Consequently, in the light of the information contained in the attached report, the General Conference is invited:

(a) to decide whether the question of the photographic reproduction of copyright works should be regulated on an international basis;

(b) in that event, to determine the extent to which the question can be regulated and whether the method adopted should be an international convention or, alternatively, a recommendation to Member States;

(c) to decide whether a special committee of governmental experts should be set up to prepare the final draft, for submission to the General Conference at its eighteenth session.

ANNEX

REPORT ON THE DESIRABILITY OF AN INTERNATIONAL REGULATION CONCERNING THE PHOTOGRAPHIC REPRODUCTION OF COPYRIGHT WORKS, ON THE POSSIBLE EXTENT AND SCOPE OF SUCH A REGULATION AND ON THE METHOD WHICH SHOULD BE ADOPTED FOR THE PURPOSE

I. Introduction

1. The preliminary study of the technical and legal aspects of the photographic reproduction of copyright works, submitted by the Director-General to the General Conference at its sixteenth session (document 16 C/20), shows that the use of modern methods of reproduction, including photocopying, microform reproduction and analogous procedures, makes it urgently desirable to seek ways of reconciling users' interests with the rights of the authors of works reproduced in this way and of their assignees, such as publishers.

2. In fact, while it is necessary to protect the legitimate rights of copyright holders, since such protection is essential for the production of intellectual works, their control over the use of copyright works must not become an obstacle to the development and improvement of documentation systems. Account must be taken, on the one hand, of the interests of authors and publishers and, on the other, of the advantages that photographic reproduction processes offer to users, libraries, documentation centres, educational establishments, research workers, etc.

3. This study will not repeat the arguments set forth in document 16 C/20 regarding the desirability and timeliness of adopting an international regulation on this subject, but will take into account new factors that have become operative since that document was prepared. In view of the terms of 16 C/Resolution 5.132, this report will also consider the "possible scope" of the proposed regulation and "the method which should be adopted for the purpose".

II. Desirability of an international regulation. Recent developments.

4. When the Executive Board, at its 84th session (May-June 1970) considered the preliminary study of the technical and legal aspects of the photographic reproduction of copyright works (document 84 EX/15), submitted by the Director-General to the Board in accordance with Article 3 (b) of the Rules of Procedure concerning Recommendations to Member States and International Conventions covered by the terms of Article IV, paragraph 4, of the Constitution, several members asked to what extent the Conferences for Revision of the Universal Copyright Convention and the Berne Convention would be able to deal with this question (cf. Report of the Programme and External Relations Commission, document 84 EX/11, Part II, item 5.4).

5. In the resolution it adopted at the conclusion of its discussions on this subject (84 EX/Decisions 5.4), the Executive Board, after noting "the decision to revise the Universal Copyright Convention and the Berne Convention in May-June 1971" and recognizing "that the revision of the Universal Copyright Convention will probably include the question of the right of reproduction and special exceptions to that right in favour of developing countries", decided "that it would be premature to consider the preparation of any regulation or recommendation concerning the photographic reproduction of copyrighted works at the sixteenth session of the General Conference" and considered "that the General Conference should pronounce, at its seventeenth session, on the advisability of adopting any international regulation or recommendation on this matter".

6. The Conferences for Revision of the Universal Copyright Convention and the Berne Convention for the Protection of Literary and Artistic Works were held at Unesco House in Paris from 5 to 24 July 1971.

7. Two new provisions in the revised Universal Copyright Convention relate to the right of reproduction.

8. In accordance with the Washington Recommendation, Article IV bis, paragraph 1, recognizes the "basic rights ensuring the author's economic interests", inter alia the exclusive right of reproduction. Paragraph 2 deals with the exceptions that may be made to the rights recognized in

paragraph 1, which are by nature discretionary and absolute. In this connexion, it should be mentioned that the text is drafted in such a way as to allow a certain latitude to States in formulating such exceptions, but that it does not specifically refer to reproduction by photography or analogous procedures.

9. Article V quater institutes on behalf of developing countries, and as an exception to the provisions of Article IV bis, a system of reproduction licences. The licence, which in certain conditions, may be granted either after expiration of a five-year period of exclusive copyright commencing from the date of first publication of a particular edition of a work - this period being reduced to three years for works of the natural and physical sciences, including mathematics, and of technology, and extended to seven years for works of fiction, poetry, drama and music, and for art books - or if, for a period of six months, no authorized copies of the edition in question have been on sale in the State in the above-mentioned conditions, has the following characteristics: it is non-exclusive, non-transferable, restricted to use in connexion with systematic instructional activities, and the price of any such edition published must be the same or lower than that normally charged in the developing country concerned for comparable works; furthermore the export of copies is excluded.

10. Like the above-mentioned Article IV bis, Article V quater does not expressly refer to the photographic reproduction of copyright works.

11. The Conference for revision of the Berne Convention for the Protection of Literary and Artistic Works retained without modification Article 9 of the Stockholm Act (1967) which sets forth the general principle of the exclusive right of reproduction.

12. The Conference also adopted a text, Article III of the Appendix to the Paris Act of the Berne Convention, which is calculated to give developing countries advantages similar to those provided by Article V quater of the revised Universal Convention.

13. Thus neither the Universal Copyright Convention as revised at Paris on 24 July 1971, nor the Paris Act of the Berne Convention, contain specific provisions regulating the photographic reproduction of copyright works or their reproduction by processes analogous to photography.

14. In these circumstances, the arguments set forth in document 16 C/20 concerning the necessity and desirability of adopting an international regulation on this subject are still equally cogent. In another connexion, the fact that legal proceedings have been instituted both in the United States of America and in France in order to secure the cessation of unauthorized reproduction, in enterprises, by photocopying, of the whole or part of works, demonstrates the necessity and urgency of arriving at provisions designed to reconcile the interests of authors and publishers with those of research, documentation and users.

15. The Intergovernmental Copyright Committee, at its eleventh ordinary session, and the Executive Committee of the Berne Union, at its first extraordinary session, respectively (Geneva, 3-5 November 1971), once again considered this matter and adopted, so far as each was concerned, a resolution on the subject. The result of the Committee's discussions and the above-mentioned resolution will be examined hereafter.

III. Extent and scope of protection

16. As noted in document 16 C/20, the studies carried out since 1961 have provided a general picture of the statutes, revision proposals and bills relating to reproduction by photography or analogous procedures, and of the suggestions made by specialists and by the bodies best qualified in this respect. Consideration of these documents enabled the Committee of Experts on the Photographic Reproduction of Protected Works which met at Unesco House in Paris, from 1 to 5 July 1968, under the joint auspices of Unesco and the United International Bureaux for the Protection of Intellectual Property (BIRPI - subsequently renamed the World Intellectual Property Organization - WIPO) to adopt recommendations that provide a number of guidelines for the international regulation of this question.

17. Certain delegations that took part in the work of the Intergovernmental Copyright Committee and the Executive Committee of the Berne Union, at their respective sessions above-mentioned, also observed that "the recommendations adopted by the Committee of Experts convened in 1968

under the joint auspices of Unesco and BIRPI should be reviewed in the light of the recent revisions of the multilateral copyright conventions and added to in certain respects, particularly as regards the uses which could be made in the industrial and commercial sectors".

18. It will therefore be well to consider what those recommendations were and to what extent they could be added to and brought up to date.

1. The recommendations of the Committee of Experts of 1968

19. The recommendations made by the Committee of Experts in 1968 deal in turn with: (a) reproduction for the personal use of the reproducer; (b) reproduction for various purposes by libraries; (c) reproduction for educational purposes in non-profit-making educational or training establishments.

(a) Reproduction for the personal use of the reproducer

20. In this case, there would be complete exemption from payment of royalties and no obligation to obtain prior authorization, but any such system would be restricted to "the personal use of the reproducer" (Recommendation No. 2). Literal interpretation of this expression implies that the reproduction shall be made by the user himself for his private personal use. Both the terms used call for further elucidation to define their scope more precisely.

21. In the first place, it will be advisable to define exactly the condition stipulating that the user must make the photocopy himself. Straight away, it would seem that the Committee of Experts intended to rule out the possibility of commissioning a photocopying firm to do the work, since in such a case, although the copy itself can be restricted to the personal use of the client, the person or body corporate accepting the order will be engaging in a professional activity, usually commercial, working for an unspecified number of clients and, thereby, acting as an intermediary in the same way as a publisher.

22. The notion of the "personal use of the reproducer" also requires further clarification. In one acceptation, it would seem to restrict the exemption to the satisfaction of an intellectual taste as distinct from meeting a professional requirement. At the root of this distinction there is the consideration of profit, pecuniary gain, since the knowledge the user will derive from consulting the photocopied record might have a direct or indirect bearing on his professional activity. The general principle of the law, however, is that none shall enrich himself at the expense of another. Nevertheless, well-founded as this observation may be, it is not sufficient to provide a sound basis for the distinction since, from a purely logical point of view, the purpose for which the reproduction is to be used ought not to serve as the criterion for determining the cases in which the right of reproduction is exercised, since the purpose for which the copy is made does not affect the interests of the author or his assignees.

23. One case will call for special attention. Large numbers of photocopies of one or more articles in a review or passages in a book are sometimes made by a firm for distribution to specialists employed in their research departments. In this way, a firm sometimes makes substantial savings, since it takes out only one subscription or buys only one copy of the book. In the long run, frequent repetition of this practice will cause considerable prejudice to the interests of authors and their assignees, the publishers, particularly in view of the high cost of publishing scientific works and the fact that the number of copies printed is relatively small.

24. In the subsequent studies, account will no doubt be taken of the solutions that have already been worked out in individual countries. In this connexion, mention should be made of Article 54 (2) of the Law of 9 September 1965 of the Federal Republic of Germany, which states that "if the reproduction is for commercial purposes on the part of the person authorized to reproduce the work, he shall pay to the author an equitable remuneration", and the "skeleton agreement", still in force, between the Börsenverein des deutschen Buchhandels /Exchange Association of the German Book Trade/ and the Bundesverband der deutschen Industrie /Federation of Germany Industry/. This agreement covers the photocopying of articles and other works published in periodicals (publications appearing more than once a year) by any one of the publishing houses participating in the agreement. Firms may choose one of four methods of payment, which all have one factor in common: payment of fees to the Exchange Association.

25. Another solution might be on the lines of the system established in the Federal Republic of Germany for tape-recorders and video-tape-recorders. The essential feature of this system is a fee "payable at source" (Article 53, paragraph 5). The manufacturer or importer of the equipment used is required to pay a sum, not exceeding five per cent of the sale price, to a collecting society authorized to distribute the amounts paid in among those entitled to remuneration.

(b) Reproductions made for various purposes by libraries

26. The Committee of Experts made a distinction between non-profit-making libraries and profit-making libraries.

(i) Non-profit-making libraries

27. The Committee considered two types of needs: one relating to the maintenance of collections, the other to the provision of copies on request to third parties.

Maintenance of collections

28. The Committee took into account the perishable nature of collections and the need to guard against the disappearance of items, either now or in the future. This danger is particularly serious in the case of newspapers and periodicals, but it should not be disregarded in connexion with books, which may go out of print.

29. Recommendation No. 5 relates to the making of microform reproductions of periodicals and books. Non-profit-making libraries would be authorized to make microform reproductions, for purposes of conservation, of periodicals or of works in their collections, provided they are out of print, and in so far as such microform reproductions cannot be obtained from the publisher.

30. Recommendation No. 6 relates to the making of full-size photographic reproductions instead of merely microform reproductions, which are difficult for library users to read. It lays down several conditions intended to protect the rights of authors and publishers, namely:

reasonable time should be allowed for the copyright owner:

(i) to announce his intentions with regard to the authorization of the reproduction or the issuing of a new edition;

(ii) to produce a new edition if such is his intention;

there should be full guarantee that the work is really out of print;

the number of copies which the library could reproduce from the microform reproduction should not exceed the number of copies of the work originally in the library collections which must be replaced for conservation purposes; in any case, the microform reproduction so made should be used to make reproductions for third parties only within the limits and under the conditions laid down for personal use.

31. Recommendation No. 7 provides for cases in which volumes or numbers of reviews have deteriorated, pages being missing or mutilated after much handling so that they are no longer legible. In such a case, the library may freely make the reproductions necessary to replace the mutilated or missing pages of certain works or periodicals, not exceeding one article in a periodical or a reasonable proportion of a book.

If the damage is more extensive and has affected several articles in one number of a periodical, or a number of pages that exceeds a reasonable proportion of a book, the Committee laid down a stricter rule: the reproduction may only be made provided that the rules laid down above for the conservation of works should remain applicable, with the reservation that the number of copies made should not exceed the number of copies of works of that type normally held by the library.

32. Recommendation No. 8 covers any inter-library services that may be required and stipulates that libraries should be authorized to make "under the same conditions, reproductions intended for use by other libraries, while imposing certain restrictions on the use of the reproductions by the recipient libraries".

Provision of copies on request to third parties

33. Understandably, keen apprehension with regard to the provision of copies on request to third parties became apparent on the part of authors and publishers, since the fact that the motive is not profit is no insurance against the number of copies made being large, even of one article or one book. Nevertheless the Committee recommended (Recommendation No. 3) that non-profit-making libraries be allowed to provide one copy free of royalties for each user provided that such copy, in the case of a periodical, shall not be more than a single article and, in the case of a book, not more than a reasonable proportion of the said book. The authorization should not, however, be extended to cinematographic works, single (occasional) photographic works and paintings, nor to any other works which would similarly justify such an exception. Such works are, in fact, complete works in themselves, as against the pages of a book, and it would gravely prejudice the interests of the authors or their assignees if multiple copies of them were made by photocopying. Nevertheless, the Committee provided for an exception in the case of the photographic reproduction of such a work "when it constitutes an illustration of the printed text".

34. The whole of this clause is based on the provisions of Section 7 (read with the Copyright (Libraries) Regulations, 1957) and Section 15 of the Copyright Act of the United Kingdom of 5 November 1956. Under these provisions, the libraries covered by the Regulations may supply, for purposes of research or private study, to any person who submits a request, together with a declaration stating that no library has provided him with a similar copy, a single reproduction of a single article from any periodical publication or a reasonable proportion of any other copyright work. Furthermore, in the case of a work, as distinct from an article in a periodical, the librarian shall not supply a copy if he knows the name and address of a person entitled to authorize the making of the copy or if, after reasonable inquiry, he could ascertain the name and address of such a person. Whether works or periodicals are in question, the persons to whom copies are supplied are required to pay for such copies a sum not less than the cost (including a contribution to the general expenses of the library) attributable to their production.

Having laid down such strict principles, the United Kingdom lawmaker nevertheless admitted that the photocopy could be "made or supplied by or on behalf of" the librarian, which allows non-profit-making libraries to have the photocopies made by commercial agents.

35. The Committee of Experts did not keep the possibility of a library's having recourse to a specialized firm, but it pruned away the conditions which, in the United Kingdom Act, govern the permitted making of photocopies by library services. Experience soon showed that a term so capable of extension as "a reasonable proportion of a work" offered scope for chicanery and that the preliminaries imposed on the library would be cumbersome and would slow down an operation which must be speedy if it is to be useful. For this reason, in the United Kingdom, the Society of Authors and the Publishers Association in 1965 issued a joint statement, in a pamphlet called "Photocopying and the Law", advocating a more flexible procedure, at least for the photographic reproduction of books. In particular, it mentions that it is not regarded as unreasonable to make a single photocopy of a single extract not exceeding 4,000 words, or a series of extracts of which none exceeds 3,000 words to a total of 8,000 words, provided that in no case the total amount copied exceeds 10 per cent of the whole work. Another object of the statement is to relieve librarians from carrying out investigations before making copies. This whole arrangement, departing from legal formalism, has no mandatory force but reflects an attitude of mind. The Committee of Experts appreciated the remarks made and, while it did not define a "reasonable proportion" of a book, at least it did not require the person requesting the copy to declare that he had not already obtained a similar copy, nor did it make the librarian responsible for ascertaining that the copyright holder could not be contacted.

36. In the subsequent studies, it will be necessary to weigh the pros and cons. Some circles will certainly object that, owing to the growing practice of ordering photocopies from libraries, authors and publishers are liable to find their receipts progressively reduced, and the opinion was expressed, even in the Committee, that this service should involve payment of a fee for remunerating authors. From this point of view, the difficulty would be to work out a procedure which would be as simple and as efficient as possible.

37. One of the recommendations made by the Committee of Experts is common to all the provisions examined so far. Recommendation No. 4 states that the photographic reproduction of unpublished works deposited in library archives should be authorized only on condition that their author

has given his explicit consent. Regardless of the purpose for which they are intended, photocopies must not result in the public communication of a work that the author intends to keep from notice. In subsequent work, attention will have to be given to the formulation of provisions to ensure "posthumous" compliance with deceased authors' wishes in this respect.

(ii) Libraries conducted for profit

38. According to Recommendation No. 9 of the Committee of Experts, profit-making libraries must in all cases comply with copyright requirements. Adjustments would, however, be possible "within the framework of either collective agreements or a system of legal licences".

39. Certain delegations that took part in the work of the Intergovernmental Copyright Committee, at its eleventh ordinary session, and of the Executive Committee of the Berne Union, at its first extraordinary session, respectively (Geneva, 3-5 November 1971), considered that the question whether a library was or was not conducted for profit was perhaps less important than the profit-making purposes of the use made of a photocopy by the person ordering it. Subsequent work on this point should therefore be conducted with much circumspection.

(c) Reproductions made for teaching purposes in educational and training enterprises with a non-commercial aim

40. Such reproductions are covered by Recommendation No. 10, the terms of which may, incidentally, cause some surprise. In fact, whereas the first part of the sentence refers to Recommendation No. 3, which relates to the ordering of photocopies by third parties from non-profit-making libraries, the second adds that the reproductions, made upon individual request, for the exclusive and personal use of teachers and students, shall be "subject to the limitations and conditions laid down for the reproductions made by profit-making libraries". The two conditions seem incompatible, since Recommendation No. 3, specifically referred to in Recommendation No. 10, relates to non-profit-making enterprises and permits exemption from the payment of royalties, whereas Recommendation No. 9, relating to profit-making libraries, imposes respect of copyright within the framework of collective agreements or, failing such agreements, within the framework of a system of legal licences, which quite clearly implies the payment of royalties. A choice must be made between the two systems; they cannot be combined. The consideration that the establishments covered by Recommendation No. 10 are non-profit-making would be an argument in favour of exemption, provided that the conditions set forth in Recommendation No. 3 are observed. Article 10, paragraph 2, of the Stockholm Act and the Paris Act of the Berne Convention, on which subsequent work could be based, would seem to leave national legislations the choice between reproduction free of charge and the payment of remuneration, even though the first and third paragraphs of the same article would seem, by analogy with quotations, to allow for total exemption under any legislation which might provide for such an exception to the exclusive right of reproduction in the interests of education. This is a point to which attention will have to be given in order to determine which system should be applicable.

2. New provisions to be introduced

41. The recent revisions of the Universal Copyright Convention and the Berne Convention for the Protection of Literary and Artistic Works were basically intended to meet the needs of developing countries which require easy access to educational, scientific and technical works.

42. To this end, limited compulsory licensing systems for translations and reproductions, from which these countries can benefit under certain conditions, have been introduced into these Conventions. The provisions relating to the right of reproduction were considered in paragraphs 9 and 13 above.

43. As was remarked in the above-mentioned paragraphs, the revised Conventions do not expressly refer to the reproduction by photography or analogous procedures of copyright works, either in general or by way of special provisions on behalf of developing countries.

44. However, the needs of these countries for photographic reproductions are evident, being attributable to several factors.

45. There is no need to stress the fact that new universities in developing countries have to build up libraries and documentation centres, and must be able to furnish their teaching staff, research workers and students quickly with the texts and documents they need.

46. Moreover, the developing countries have special problems to face with regard to the acquisition, conservation and circulation of documents. In particular, the costs of locating and acquiring printed matter and periodicals are very high, owing to the distances involved, and in many cases conservation presents serious problems because of the climate.

47. Again, as increasing numbers have to be served, important works soon go out of print and become practically unobtainable. However zealously he goes through the catalogues, the librarian living in Africa, Asia or Latin America, owing to the distance and despite the speed of air communications, is often too late to take advantage of an opportunity of which he is too frequently the last to learn.

48. If it is desired to complete collections of periodicals going back some time, it is very difficult to obtain back numbers. They also take up a great deal of space on the shelves, sometimes hardly proportionate to the number of times they are consulted. The libraries of new universities in developing countries are therefore obliged to deal with the most pressing problems first and generally to restrict their purchases to works that can be acquired rapidly and that will meet the most urgent needs of curricula and teaching.

49. The identification and acquisition of basic works or essential collections in microfiche form can do much to ease accommodation and conservation problems for these libraries. Moreover, photocopies, microfilms and microfiches, by making available to research workers writings or information not in the possession of the university libraries, render the greatest service and undoubtedly meet an urgent need.

50. This brief outline of the documentation situation in developing countries demonstrates the need for including in the proposed recommendation special provisions regarding these countries.

IV. Method which should be adopted for regulating the question of photographic reproduction

51. The Intergovernmental Copyright Committee and the Executive Committee of the Berne Union, again at their eleventh ordinary session and first extraordinary session respectively (November 1971), at the conclusion of their discussions on the question of the photographic reproduction of copyright works, each for its part adopted an identical resolution reading as follows:

"The Intergovernmental Copyright Committee, sitting with the Executive Committee of the Berne Union,

The Executive Committee of the Berne Union, sitting with the Intergovernmental Copyright Committee,

Having considered the item of its agenda relating to the photographic reproduction of copyright works,

Being of the opinion that the matter is not yet ripe for international regulation, that its study should be continued and that the Secretariats of WIPO and Unesco, with the assistance of experts from developed and developing countries, should formulate proposals on this subject in the first half of 1973,

Considers that the said matter should, after this study, be regulated at the international level by a recommendation, which could serve as a guideline for national legislations, and not by an international convention,

Further expresses the wish that the said proposals should be referred to the two Committees at their joint meetings in 1973."

52. This resolution contains two essential directions relating respectively to the nature of the international instrument that should be chosen to solve the problem of the photographic reproduction of copyright works, and to the procedure to be followed for this purpose.

1. Nature of the international instrument proposed

53. The Committees for the Copyright Conventions took the view that the matter in hand should be "regulated at the international level by a recommendation, which could serve as a guideline for national legislations, and not by an international convention".

54. The 1968 Committee of Experts, for its part, considered "that it is for national legislation to lay down conditions for the photographic reproduction of works protected by copyright, and in so doing to aim at a fair balance between the interests concerned" and, in order that the solutions adopted should diverge as little as possible from one country to another, recommended taking into account a number of principles which have been examined in paragraphs 18 to 35 above.

55. The views thus expressed by the Committee of Experts in 1968 and by the Committees for the Copyright Conventions appear to be entirely complementary.

56. Unless general directions are set forth in an international instrument, there is liable to be diversity in the national regulations adopted to deal with the matter; this is not desirable, since the needs of culture and research transcend the limits of the sovereignty of States, as was recognized by the 1968 Committee of Experts itself when it adopted a series of recommendations intended to reconcile the interests involved.

57. On the other hand, the recommendations that the General Conference of Unesco is authorized to adopt under the terms of Article IV of the Constitution, tend to influence the development of national legislation and national practices by defining an international policy line. They leave States entirely free, however, to give effect to their provisions in the way that best suits their particular circumstances.

58. The need to keep national sovereignty in the matter of legislation intact in this particularly complex field of the photographic reproduction of copyright works, and to reconcile it with the concern to secure respect of a certain number of guiding principles, would seem to militate in favour of adopting an international Recommendation.

2. Procedure

59. The above-mentioned Committees for the Copyright Conventions, again at their November 1971 sessions, found that the subject was very complex and that it was an essentially technical matter. They consequently took the view that any text drafted to serve as a guide to national legislation in this field should be reviewed by them beforehand.

60. Having regard to the wish thus expressed by the Committees, it is proposed that the following procedure be followed with a view to the drafting of the Recommendation in question.

61. The Secretariat of Unesco and the International Bureau of WIPO will proceed, in consultation with the experts, to revise the recommendations adopted by the Committee of Experts in 1968, taking into account the texts revised in Paris in July 1971 of the Universal Copyright Convention and the Berne Convention, and will add to them in certain respects, particularly as regards possible uses in the industrial and commercial sectors.

62. The new recommendations thus prepared will be examined by the Intergovernmental Copyright Committee and by the Executive Committee of the Berne Union, at their joint meetings in 1973, as desired by these Committees in the identical resolutions they adopted respectively at the conclusion of their joint sessions in 1971.

63. These revised recommendations would then serve as the basis for the draft international instrument to be annexed to the final report that the Director-General is required to communicate to Member States, in accordance with Article 10, paragraph 3, of the Rules of Procedure concerning Recommendations to Member States and International Conventions.

64. Since the Intergovernmental Copyright Committee and the Executive Committee of the Berne Union are intergovernmental bodies, in whose sessions, in addition to their respective members, all Member States of the United Nations or of the United Nations Educational, Scientific and

Cultural Organization may take part, the Director-General has made no provision in 17 C/5 for the meeting of a special committee of technical and legal experts that the General Conference may decide to convene under the terms of Article 10, paragraph 4, of the Rules of Procedure concerning Recommendations to Member States and International Conventions. It is none the less for the General Conference to decide on this point and, if necessary, to approve the appropriate budgetary allocations, the funds required for convening such a special committee amounting to $3,900.